Paglinawan v. Frey
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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| SHERA PAGLINAWAN and WENDY SHAW individually and on behalf of all others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>JAMES FREY and JANE DOE FREY, individually and the marital community comprised thereof; NAN A. TALESE/DOUBLEDAY a division of RANDOM HOUSE, INC. a New York corporation; and ANCHOR BOOKS, a division of RANDOM HOUSE, INC. a New York corporation<br><br>Defendants. | No. CV6 0099<br><br>FIRST AMENDED CLASS ACTION COMPLAINT |

Plaintiffs, Shera Paglinawan and Wendy Shaw, by their undersigned attorneys, bring this civil action for damages and declaratory relief on behalf of themselves and all others similarly situated against the above-named Defendants and complain and allege as follows:

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## I. NATURE OF ACTION

1.1 Plaintiffs bring this action as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased the novel A Million Little Pieces from a seller located in the State of Washington prior to the date that James Frey publicly admitted to fabricating certain portions of the book or who are Washington residents who began reading or listening to the book prior to the date that James Frey publicly admitted to fabricating certain portions of the book.

1.2 A Million Little Pieces was written by Mr. James Frey and published and distributed by Nan A. Talese/Doubleday and Anchor Books, both of which are subsidiaries of Random House, Inc.

1.3 A Million Little Pieces was purportedly a memoir and was advertised and marketed as such by Random House, Inc., Nan A. Talese/Doubleday and Anchor Books. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

1.4 In reality, Mr. Frey fabricated large portions of A Million Little Pieces and Nan A. Talese/Doubleday and Anchor Books were or should have been aware of these fabrications.

1.5 As a result of the Defendants' actions the Plaintiffs have suffered economic damage.

## II. PARTIES

2.1 Plaintiff Shera Paglinawan has at all material times been a resident of Seattle, Washington.

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2.2 Plaintiff Wendy Shaw has at all material times been a resident of Seattle, Washington.

2.3 Defendant James Frey is, upon information and belief, a resident of New York.

2.4 Defendant Nan Talese A. Talese/Doubleday is a business subsidiary of Random House, Inc., a New York corporation.

2.5 Defendant Anchor Books is a business subsidiary of Random House, Inc., a New York corporation.

## III. JURISDICTION AND VENUE

3.1 Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because the Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds $75,000.00. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) because the Defendants systematically and continuously sold their product within this district and Defendants transact business within this district.

## IV. CLASS ACTION ALLEGATION

4.1 Plaintiffs bring this suit as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and a Plaintiff Class (the "Class") composed of all persons who purchased A Million Little Pieces by James Frey from a vendor in the State of Washington prior to the date that Mr. Frey publicly admitted to fabricating certain portions of the book and on behalf of all residents of the State of Washington who began reading or listening to A Million Little Pieces prior to prior to the date that Mr. Frey

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publicly admitted to fabricating certain portions of the book. Plaintiffs reserve the right to modify this class definition prior to moving for class certification.

4.2 This action has been brought and may be properly maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

a. The Class is ascertainable and there is a well-defined community of interest among the members of the Class;

b. Membership in the Class is so numerous as to make it impractical to bring all Class members before the Court. The identity and exact number of Class members is unknown but is estimated to be at least in the thousands considering the fact that A Million Little Pieces has sold over 3.5 million copies. Plaintiffs believe that members of the Class can be identified, *inter alia*, through the sales records of Nan A. Talese/Doubleday, Anchor Books Random House, and retailers located in the State of Washington, and with cooperation from the Class members.

c. Plaintiffs' claims are typical of those of other Class members, all of whom have suffered harm due to Defendants' uniform course of conduct.

d. Plaintiffs are members of the Class.

e. There are numerous and substantial questions of law and fact common to all of the members of the Class which control this litigation and predominate over any individual issues pursuant to Rule 23(b)(3). The common issues include, but are not limited to, the following:

i. Does the Washington Consumer Protection Act apply?

ii. Were Defendants' representations false?

iii. Were Defendants aware of the falsity of their representations?

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iv. Was there a valid contract between the parties?

v. Were Plaintiffs and Class members damaged?

f. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;

g. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent in the prosecution of class actions to represent themselves and the Class;

h. Without a class action, the Class will continue to suffer damage, Defendants' violations of the law or laws will continue without remedy, and Defendants will continue to enjoy the fruits and proceeds of their unlawful misconduct;

i. Given (i) the substantive complexity of this litigation; (ii) the size of individual Class members' claims; and (iii) the limited resources of the Class members, few, if any, Class members could afford to seek legal redress individually for the wrongs Defendants have committed against them;

j. This action will foster an orderly and expeditious administration of Class claims, economies of time, effort and expense, and uniformity of decision;

k. Inferences and presumptions of materiality and reliance are available to obtain class-wide determinations of those elements within the Class claims, as are accepted methodologies for class-wide proof of damages; alternatively, upon adjudication of Defendants' common liability, the Court can efficiently determine the claims of the individual Class members;

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l. This action presents no difficulty that would impede the Court's management of it as a class action, and a class action is the best (if not he only) available means by which members of the Class can seek legal redress for the harm caused them by Defendants.

m. In the absence of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of their wrongful conduct.

4.3 The Claims in this case are also properly certifiable under applicable law.

## V. STATEMENT OF FACTS

5.1 James Frey presented a manuscript to Nan Talese, a publisher at Nan A. Talese/Doubleday. This manuscript was in the form of a novel. This manuscript formed the basis of A Million Little Pieces.

5.2 Nan A. Talese/Doubleday agreed to publish Mr. Frey's manuscript if he recast the novel as a memoir.

5.3 In 2003 Nan A. Talese/Doubleday published A Million Little Pieces.

5.4 In 2005 Anchor Books issued the paperback version of A Million Little Pieces.

5.5 The book was purportedly a non-fiction memoir and was advertised and marketed as such by Nan A. Talese/Doubleday and Anchor Books. The book was written in the first person and claimed to tell the true story of James Frey, chronicling Mr. Frey's struggles with crime, alcohol and drug addiction.

5.6 A Million Little Pieces has sold over 3.5 million copies to date.

5.7 In 2004 Oprah Winfrey added A Million Little Pieces to her well known book club.

5.8 On January 8, 2006 the investigative website The Smoking Gun published an article revealing the fact that Mr. Frey fabricated large portions of A Million Little Pieces.

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5.9 Mr. Frey had publicly admitted that he fabricated certain parts of the book.

5.10 Plaintiff, Shera Paglinawan, received A Million Little Pieces as a gift from her mother and began reading the book prior to prior to the date that Mr. Frey publicly admitted to fabricating certain portions of the book.

5.11 Plaintiff, Wendy Shaw, purchased A Million Little Pieces in King County, Washington and read the book prior to the date that James Frey publicly admitted to fabricating certain portions of the book.

5.12 As a result of the Defendants' actions the Plaintiffs and other Class members have suffered economic damage.

## VI. CAUSES OF ACTION

### A. Breach of Contract

6.1 Plaintiffs reallege all prior allegations as though fully stated herein.

6.2 Plaintiffs and Class members purchased and/or read or listened to A Million Little Pieces based on the Defendants' representations that it was a truthful memoir.

6.3 Defendants' representations were false and its sales of A Million Little Pieces constitute a breach of contract.

6.4 As a result of the breach Plaintiffs and Class members suffered damages which may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

### B. Unjust Enrichment

6.5 Plaintiffs reallege all prior allegations as though fully stated herein.

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6.6 Defendants were and continue to be unjustly enriched by their false representations as to the truthfulness of A Million Little Pieces in an amount to be proven at trial.

C. Negligent Misrepresentation

6.7 Plaintiffs reallege all prior allegations as though fully stated herein.

6.8 Defendants owed Plaintiffs and Class members a duty to exercise reasonable care in advertising the truthfulness of A Million Little Pieces.

6.9 Defendants provided false information to Plaintiffs and Class members relating to the truthfulness of A Million Little Pieces.

6.10 Defendants breached their duty to Plaintiffs and other Class members by failing to exercise reasonable care or competence in guaranteeing the truthfulness of A Million Little Pieces.

6.11 Plaintiffs and Class members reasonably relied on the information provided by Defendants regarding the truthfulness of A Million Little Pieces.

6.12 As a proximate cause of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

D. Intentional Misrepresentation (Deceit)

6.13 Plaintiffs reallege all prior allegations as though fully stated herein.

6.14 Defendants made representations of fact regarding the truthfulness of A Million Little Pieces for the purpose of inducing Plaintiffs and other Class members to purchase and/or read or listen to the book.

6.15 Defendants knew or believed the representations referred to in the preceding paragraph were false.

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6.16 Plaintiffs and other class members reasonably relied on Defendants' false representations.

6.17 As a result of Defendants' false representations Plaintiffs and other Class members suffered damages in an amount to be proven at trial.

E. Washington Consumer Protection Act Violation – RCW 19.86, *et seq.*

6.18 Plaintiffs reallege all prior allegations as though fully stated herein.

6.19 At all times relevant to this action Washington had in effect RCW Ch. 19.86 prohibiting unfair or deceptive acts or practices in the conduct of business.

6.20 Defendants' false claims regarding the truthfulness of A Million Little Pieces constituted unfair or deceptive acts or practices in the conduct of trade or commerce.

6.21 Defendants' acts or practices have the capacity to deceive a substantial portion of the public and to affect the public interest.

6.22 As a result of Defendants' unfair or deceptive acts or practices, Plaintiffs and other Class members suffered injuries in an amount to be proven at trial.

F. Declaratory Judgment

6.23 Plaintiffs reallege all prior allegations as though fully stated herein.

6.24 Plaintiffs and the Class, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 18 U.S.C. § 2201(a), hereby seek a declaratory judgment that Defendants' conduct in misleading purchasers and readers of A Million Little Pieces violated the Washington Consumer Protection Act and breached their implied or express contract with purchasers and readers of the book.

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## VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class members request that the Court enter an order of judgment against Defendants including the following:

A. Certification of the action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure with respect to Plaintiffs' claim for injunctive and declaratory relief, and Rule 23(b)(3) of the Federal Rules of Civil Procedure with respect to the claims for damages, and appointment of Plaintiffs as Class Representatives and their counsel of record as Class Counsel;

B. A declaration that Defendants violated the Washington Consumer Protection Act;

C. A declaration that Defendants breached their explicit of implicit contract with readers and purchasers of A Million Little Pieces.

D. Damages in the amount of monies paid for A Million Little Pieces.

E. Damages for the time spent by Plaintiffs and Class members reading A Million Little Pieces.

F. Actual damages (including all general, special, incidental, and consequential damages), statutory damages (including treble damages), and such other relief as provided by the statutes cited herein;

G. Prejudgment and post-judgment interest on such monetary relief;

H. Equitable relief in the form of restitution and/or disgorgement of all unlawful or illegal profits received by Defendants as a result of the unfair, unlawful and/or deceptive conduct alleged herein;

I. Other appropriate injunctive relief;

J. The costs of bringing this suit, including reasonable attorneys' fees; and

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K. Such other relief as this Court may deem just, equitable and proper.

DATED this 30th day of January, 2006.

MYERS & COMPANY, P.L.L.C.

Attorneys for Plaintiffs and Class members

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